

Unclassified

English - Or. English

30 November 2017

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Cancels & replaces the same document of 17 October 2017

Working Party No. 3 on Co-operation and Enforcement

**Summary of Discussion of the Roundtable on Methodologies for Conducting
Market Studies**

**Annex to the Summary Record of the 125th meeting of Working Party No 3 on Co-
operation and Enforcement held on 20 June 2017**

20 June 2017

This document prepared by the OECD Secretariat is a detailed summary of the discussion held during Item 2 of the 125th meeting of Working Party No. 3 on 20 June 2017.

More documentation related to this discussion can be found at

www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm

Please contact Ms. Despina Pachnou if you have any questions regarding this document
[phone number: +33 1 45 24 95 25 -- E-mail address: despina.pachnou@oecd.org].

JT03423909

Summary of Discussion of the Roundtable on methodologies for conducting market studies

By the Secretariat

1. The **Chair of WP3**, Professor Frédéric Jenny, opened the discussion by noting that the Roundtable on methodologies for conducting market studies is a part of the Competition Committee's strategic theme of market studies, and outlining the previous discussions and workshops held on this subject. He mentioned that there may be scope for further work on outcomes and remedial actions based on market studies, and the ex post evaluation of the impact of market studies. The Chair further suggested that the Secretariat could compile the findings in a compendium, building on the OECD's own work and the ICN's Good Practice Handbook on Market Studies. The Chair then invited the **Secretariat** to introduce the topic.
2. The **Secretariat** summarised the findings of its 2015 survey of competition authorities on market studies, emphasising in particular that there is a wide range of objectives and potential outcomes from market studies. This variety means that there is no single clear set of market study methodologies to be applied in every circumstance. However, the Secretariat's research did find that (1) the market studies reviewed followed a broadly similar process and (2) some methodologies appear to be particularly relevant to particular sectors or situations.
3. The Secretariat continued by describing the findings in the background paper with respect to market study project planning, as well as the information gathering process, and specifically background information collection, stakeholder interviews, information requests, surveys and other techniques including mystery shopping. Analytical technique selection can be guided by an initial mapping of the market structure, and can include price and profitability analyses, supply-focused analysis (e.g. barriers to entry and expansion), demand-focused analysis (e.g. searching and switching behaviour) and regulatory assessment.
4. The Secretariat concluded by explaining that there are a variety of methods available to authorities conducting market studies, depending on their particular objectives and the sector under examination. It is important for market study teams to be sufficiently flexible and open-minded, while still grounded in a well-evidenced project plan that takes inspiration from past studies and institutional knowledge.
5. The Chair then explained that the Roundtable would be organised in four parts: the identification of hypotheses to guide the market study process, information gathering techniques, analytical techniques and analysis of regulations.

1. Hypotheses for market studies

6. To begin the Roundtable, the Chair invited Chile's competition authority FNE to describe its process for developing market study hypotheses. The delegate from Chile explained that FNE recently adopted guidelines on market studies based on OECD recommendations, and created a new market studies unit. The delegate described FNE's first in-house study of the annuities market, for which hypotheses were identified based

on preliminary indications that the market was not functioning well. Hypotheses were informed by observations regarding consumer behaviour in Chile (specifically, a relatively high proportion of Chilean retirees choose annuities relative to other jurisdictions). The FNE reached out to the UK Competition and Markets Authority (CMA) to learn about the CMA's experience and approach in engaging with sectoral regulators, and established a good working relationship with Chile's pensions and insurance regulators, as well as the ministry of finance.

7. The Chair then asked **Denmark** whether market problems are generally clear at the outset of a study, and whether market study methodologies in that jurisdiction are selected based on the hypotheses identified. The delegate from Denmark explained that hypotheses may be based on market problems that have already been identified by the authority in merger or enforcement cases, and are then developed through desk research and market participant consultations.

8. A variety of sources are used to develop hypotheses, including enforcement cases. For demand-side problems, hypotheses tend to be based on consumer complaints, media commentary and stakeholder input, whereas for supply-side problems, internal competition authority staff are primarily responsible for identifying hypotheses. Academics are consulted during the market study process to challenge hypotheses, develop new hypotheses and refine the market study methodology.

9. **Mexico** was then asked by the Chair to describe the process to identify and test hypotheses used in its study of competition in the financial system. The delegate from Mexico explained that, while the financial system exhibited strength (low debt delinquency rates, adequate capitalisation), levels of penetration of financial services for the broader population were limited. As a result, the competition authority examined the sector structure, regulation of entry and operations of market participants, firm behaviour and potential regulatory changes in order to explore potential competition problems in the market, and issue recommendations on regulatory actions and sectoral policy.

10. To conclude this part of the discussion, the Chair observed, based on delegate contributions, that formulating hypotheses often means collecting information for market studies even before the study begins.

2. Information collection methodologies

11. The Chair opened the discussion of information collection for market studies by observing that there appear to be two levels of information collected: background information and, once a clearer sense of a market is developed and hypotheses identified, a more detailed information collection exercise. He invited **Ukraine** to share its experience with these two levels of information gathering processes.

12. Ukraine explained that it has developed a standard methodology to unify market study approaches across its central and regional offices. This involves a preliminary phase of background research, which involves compiling internal information and publicly-available information to understand the key features of a market. If the preliminary research finds signs of competition concerns, or there is not sufficient information to develop a coherent picture of the market, the study will move to a second phase of information collection. This process, which can include information requests, data analysis and public consultations, will be aimed at collecting information to identify the

market and its participants, as well as to examine whether any participants possess market power.

13. **Argentina's competition authority CNDC** indicated that two stages are also used for market studies in their jurisdiction. The first stage generally involves contracting external consultants to prepare a preliminary analysis based on public information or information held internally. The CNDC provides the consultants with information and contacts. When this study indicates potential competition concerns, a more comprehensive information collection process is undertaken by CNDC. The delegate observed that in retail markets information may be best obtained from market research firms which hold consumer and transaction data, whereas in concentrated input markets, business associations can be the best route for obtaining information. In service sectors, it can be useful to get information from regulatory agencies, which often hold data that can be useful for analysing competitive conditions in the market. In general, the delegate noted that the CNDC seeks information for market studies from as broad a range of sources as possible.

14. The Chair then turned to the **Netherlands** to open a discussion about working with stakeholders to collect information for market studies. The delegate from the Netherlands began by noting that it is the policy of the competition authority to be as open as possible in market study work in order to encourage voluntary co-operation from market participants, although there can be limits to such co-operation. Specifically, the delegate noted that market participants are often co-operative in supplying information at the outset of a market study, but become hesitant regarding the publication of results – especially when the authority's conclusions differ from the market participants' views. For example, in a study of some basic products in the agricultural sector, the competition authority examined margins and prices from the farmer to the supermarket, and found that wholesalers and supermarkets' costs accounted for a large part of retail prices, which was controversial. The delegate continued by emphasising the need for authorities to try to ensure significant stakeholder involvement throughout the market study (i.e., early consultations, providing draft reports, etc.). Market participants may propose changes which are important from their perspective, and which the market study teams believe are reasonable, and incorporating these changes can help ensure the study is better received by stakeholders. Finally, the delegate noted that a study can be conducted jointly with regulators or ministries that are key stakeholders in a market, which can be an effective opportunity to demonstrate to the regulator or ministry the importance of competition in the sector.

15. **Canada** then discussed stakeholder involvement in its market studies, noting that the competition authority does not have an explicit market study provision in its competition law, cannot compel the production of information for market studies and cannot make recommendations in market studies that are binding on regulators or market participants. As a result, the authority must work collaboratively with policymakers and stakeholders to identify solutions to competition problems. The authority works to maximise participation in stakeholder consultations by ensuring they are inclusive, transparent and easily accessible. For example, in its study of Fintech companies (where the authority looked at barriers to entry and regulatory reform from a national perspective), there was not a significant amount of available data since the Fintech sector is an emerging one. Therefore, the authority compiled qualitative information from market participants about their activities (including the incumbent banking community, which has actively participated). Information gathering tools used by the authority were flexible according to stakeholder preferences, and include written submissions (with an

option to keep the submission confidential), discussions (in person or over the phone), workshops (e.g. an invitation-only workshop brought regulators across Canada together), social media (e.g. Facebook polls, Twitter) and the sharing of preliminary results.

16. The Chair then invited **Paolo Palmigiano, General Counsel and Chief Compliance Officer – EMEA at Sumitomo Electric Industries**, who was involved in several financial sector and telecommunications market studies as a market participant representative, to provide the perspective of a stakeholder on the balance between the burden and advantages of different types of stakeholder participation and information requests.

17. Mr. Palmigiano began by noting that companies can sometimes find it to be a burden to be involved in market studies. Since studies can be time- and resource-intensive for both stakeholders and authorities, markets should be selected carefully. Mr. Palmigiano then proceeded to identify some opportunities to ensure competition authorities work well with stakeholders in the context of market studies. First, he expressed the view that it is preferable to start with desk research, so that the authority can form a general understanding of the market to shape information requests, and determine what is already available to reduce the burden of information requests – especially because market participants may not store the information in the format that the authority wishes, meaning significant work may be required to respond to such requests. In addition, Mr. Palmigiano noted that multiple follow-up information requests have resource costs for firms, and so it may be preferable to have a discussion with the stakeholder at the outset of a study (after completing desktop research) to determine the focus, extent and scope of information requests. Compromise can also be important in Mr. Palmigiano's view, and so draft information requests should be used to consult stakeholders on what is feasible and on what timeframe, as well as potential alternatives. As indicated in the ICN Good Practice Handbook on Market Studies, Mr. Palmigiano indicated that requests for information should make clear the precise set of information being sought, the reason, the consequences for not providing this information, and a contact point at the competition authority. In his experience, Mr. Palmigiano has observed that meetings tend to be helpful for both the competition authority and stakeholders in market studies, as firms appreciate the opportunity to explain how a market works and clear up any misunderstandings – especially where there are complex technical issues or economic theories at play. These meetings also have the benefit of being less burdensome than requests for information. With respect to surveys, Mr. Palmigiano expressed the view that they can be a helpful tool but can involve challenges, including the risk that a question will be misinterpreted, which can undermine the utility of the survey results. As a result, survey questions should be the subject of advance consultation in case refinements are necessary. Finally, Mr. Palmigiano discussed the importance of confidentiality of the information shared by businesses in the context of market studies, as business secrets are essential for firms and an inability to protect those secrets may undermine the willingness of firms to participate in market studies.

18. Next, the Chair turned to **Australia**, which emphasised in its contribution the importance of obtaining confidential information to get to the bottom of issues, as evidenced in their experience with an inquiry into gas markets on the East coast of Australia. In particular, the delegate emphasised that without this information, it was very difficult to obtain a comprehensive understanding of the market, and without mandatory information requests, this information would not be obtained. In Australia, mandatory information requests for market studies conducted on the authority's own initiative must be approved by the minister. This process has the benefit of ensuring the competition

authority has political support for studies when they do receive permission to collect the information. The competition authority also has the power to compel a person to give evidence on oath for a market study, which can occur in a public session or in private. Australia has strong confidentiality and non-disclosure safeguards for information provided. Finally, the delegate noted that the competition authority is conscious of the burden on stakeholders, and therefore seeks to limit the scope of information production under obligatory notices, by among other things engaging with parties before issuing an information request to understand how the information is held, and whether there are ways the burden could be minimised. This has an additional advantage for the authority of avoiding the receipt of irrelevant information.

19. **South Africa** then described its competition authority's approach to information collection for market studies. The delegate noted that there are two types of market studies in their jurisdiction: (i) voluntary studies, where the authority has no power to compel information (and information requests have been challenged by market participants on the grounds that these requests were similar to an investigation); and (ii) mandatory studies. The delegate continued by explaining that the authority spends a significant amount of time targeting the right stakeholders for information requests, tailoring the format of those requests (e.g. written information requests and submissions may be preferable when the matter is complex, etc.), and building stakeholder support to encourage participation. However, if stakeholders do not participate, the authority can compel submissions for mandatory market studies (and generally the authority prefers written submissions). The authority guarantees the protection of confidential information, but this can hamper public reporting and outreach efforts, a challenge encountered in a health care market inquiry.

20. **Lithuania** then discussed the relationship between qualitative observations obtained in market studies and hard data. In particular, the delegate indicated that when the two are inconsistent, the authority generally relies on data, since qualitative observations may be exposed to the risk of bias. For instance, in a dairy sector study, the competition authority in Lithuania found that some observations from milk producers about pricing were not accurate reflections of market conditions and actual price levels. When there are such inconsistencies, the competition authority will seek additional perspectives, and may rely on its experience in a given market.

21. Turning to the subject of surveys for market studies, **Finland** explained that surveys are generally used when data is not available and claims from market participants are unclear. For example, in its banking sector survey, the competition authority added context to information received from banks by conducting a telephone survey which uncovered low penetration rates of some services (online banking and cash withdrawals). In a grocery chain study, the authority conducted an internet survey to examine normal shopping behaviour, price awareness and participation in loyalty programs. This produced the valuable insight that customers of one supermarket chain appreciated monetary rewards whereas customers of another appreciated low prices, which helped to understand consumer preferences and competitive conditions in the market.

22. **Romania** then described the use of third-party survey providers, noting that external polling firms employed by the competition authority may be a valuable source of information, particularly when these firms are credible survey specialists. The authority uses a public tender to select survey providers, and looks at usual margins of error as well as other indicators of quality. The delegate observed that surveys are becoming more and more important to assess competition problems in sectors, noting the example of the

pharmaceutical sectors study, which relied on survey data to analyse problems with the functioning of the market.

23. Next, the Chair called on **Japan** to describe their use of surveys to explore concerns about anticompetitive firm conduct in negotiations. The delegate noted that the survey into bridal companies helped the Japan Fair Trade Commission (JFTC) to identify conduct that could constitute an abuse of a superior bargaining position, which in turn led to advocacy efforts. The authority used its website, Twitter and Facebook to call market participants to attend training seminars on competition law. Also, considering the result of the survey, such activities encourage business partners of bridal companies to report problematic conduct to JFTC.

24. **Russia** then described research it conducted in the container shipping sector, which relied on extensive statistics, information requests and public data to help define the market and calculate market shares. In addition, academic research data was used to better understand the composition of the market and assess market participant conduct.

25. The **United States** then concluded the section of the Roundtable on information collection by explaining that the Federal Trade Commission (FTC) generally relies on voluntary information requests and public information, but that it also has statutory authority to compel the production of information for research activities (including market studies). The latter power is used judiciously when the FTC identifies a need to compel non-public information, and safeguards are applied to ensure requests are reasonable and proportionate, and sensitive business information received is kept confidential. The FTC is also required to provide public notice of a market study that involves compulsory process and invite public comments on its design. The delegate noted that the FTC seeks to obtain input from an array of stakeholders.

26. The delegate described a 2016 study conducted by the FTC on the effectiveness of its past (2006 to 2012) merger remedies using a case study approach (including interviews with firms and customers) as well as questionnaires and data analysis (based on compulsory requests for annual sales data, which imposed a relatively small burden on stakeholders). The study team analysed each FTC order to determine the impact on competition in the market, supplemented by an in-depth study of markets where staff had additional specialised knowledge.

27. Next, the delegate described a study of patent assertion entities (“PAEs”). PAEs are firms that primarily acquire patents through third parties and seek to generate revenue by asserting them against alleged infringers. The FTC and the US Department of Justice Antitrust Division (DoJ) conducted a workshop of users and owners of PAEs, which identified the need for additional data. However, the lack of a directory or comprehensive database of PAEs meant that it was not possible to construct a statistically representative sample for data analysis. As a result, the FTC used a case study information gathering approach, submitting in-depth compulsory information requests to the largest PAEs as well as a sample of small, medium and large firms. These mandatory information requests included both a quantitative (licence and patent acquisition agreements, amounts of royalties received) and a qualitative component (on PAEs’ business models), and were the underpinning for the central conclusions of the final report.

28. Finally, the delegate emphasised the frequent use of workshops, which have enabled the FTC to hear the views of academics, industry participants and other experts during market studies. For example, the FTC’s sharing economy report, which explored policy questions about whether regulations can accommodate new business models and

consumer protection, among other issues, was based on a one-day workshop and written submissions.

3. Methodologies for analysis

29. Next, the Chair turned to the topic of analytical methodologies for market studies. To begin, he called on **Latvia** to describe preliminary analytical techniques such as market participant mapping and summary statistics.

30. The delegate from Latvia explained that in its standardised approach to market studies, structural indicators such as the HHI are used generally as technical indicators to provide broad information on a market. In addition, merger review data and trends in revenues as well as market shares are examined to evaluate how competition in the sector is evolving. The delegate noted that these indicators can be useful in, among other things, identifying potential barriers to entry.

31. Next, **Chinese Taipei** described two different types of market studies that involved the use of indicators as preliminary indications of competitive conditions in certain sectors. The first study was a screening study, which aimed to identify industries with weak competition, based on indications of high market concentration (including the HHI), high profit margins or barriers to entry. This study relied on data from the census of enterprises and the competition authority's internal industry database. In 2016, 18 sectors were identified for further observation.

32. The second study described by the delegate involved the concentration of convenience stores in Chinese Taipei. Data from electronic invoicing systems (considered more reliable than survey data) was obtained for the four major chains, used to calculate the HHI and then combined with a GIS database to examine the geographic distribution of intra-brand competition. This permitted the authority to identify areas with relatively high concentration, and will form the basis of advocacy efforts involving a "competition map" for convenience stores. In addition, the authority's market study provided an opportunity to issue a notice to market participants to clarify conduct that would be a violation of competition laws.

33. **Singapore** then described an analysis of petrol prices which sought to respond to public concerns. This included a study of the decision-making process of petrol companies and motorists as well as an analysis of petrol firm cost structures. Information was collected through mandatory information requests, the purchase of price data from a third party data provider and a consumer survey. The market study team studied the components of listed petrol prices to understand the drivers of price changes, and found that non-fuel components (operating costs, taxes and duties, land costs, etc.) have generally increased, and that the operating margin of petrol companies also increased. Pass-through of wholesale prices was found to be relatively high, and symmetric (regardless of a wholesale price increase or decrease). As a result, the market study concluded there was no evidence to suggest collusion, and that petrol companies do in fact monitor and react to prices quickly. Nonetheless, the competition authority has continued to monitor whether there are opportunities to improve competition in the market.

34. The Chair then turned to **Hungary** to describe its analysis of payment card acceptance in that jurisdiction, which is still in the information gathering stage. The delegate indicated that the hypotheses guiding information collection were based on

discussions with Hungary's Central Bank regarding interchange fees and card acceptance by merchants. The competition authority commissioned market research which found only half of merchants accept bank cards, and the majority of merchants found the service fees to be high. In addition, the delegate noted that information has been received from the Central Bank and acquiring banks, and a request for information is being prepared for relevant market participants.

35. The **EU** was asked by the Chair about its use of econometric analysis in market studies. The delegate responded that it is not a common approach for European Commission, but that such methods were applied in a study of generic pharmaceuticals. In particular, there was a general perception that generic entry was delayed in the market. The market study team started with descriptive statistics, but found that there was a big variation in generic entry timing and effects. Next, a pricing analysis was conducted to understand how prices generally dropped after the entry on the market of generic products using national data for 190 active ingredients. The study team found that after the loss of exclusivity in a medicine, there was a 20% drop in some prices, although in some countries and for some active ingredients, the drop was as much as 90%. The team explored potential explanations for this, and examined which circumstances were associated with the strongest drop in prices after generic entry. A simple econometric model (with robustness checks) was prepared, which suggested that some regulatory measures on how generic medicines should be priced (e.g. price caps) could have an impact, as well as compulsory substitution measures (pharmacies proposing the generic substitute at the point of sale). Given the regulatory nature of some of these factors, the Commission carried out forceful advocacy, giving recommendations on measures to facilitate generic entry at the national and EU level. In addition, a number of cases regarding payments by originator companies to delay generic entry have been opened by the Commission following the completion of the study.

36. **Turkey** then described its analysis in a cement inquiry, which was conducted based on a large transaction dataset which included the identity of the supplier, region, type of cement, quantity sold and price. Cost figures were requested from firms, and refined based on other information gathered. A price-cost analysis using an autoregressive distributed lag model was applied by the authority, which found that there was a correlation between price and cost only in some cities, that changes in price were most affected by changes in the previous period's prices and that decreases in production costs did not lead to price decreases (in fact, sometimes it led to price increases). A price-demand analysis was also conducted using a "cointegration and error correction model", which was unable to find an effect of demand on price. Finally, a simulation was conducted to determine whether there was collusive behaviour, which found that actual prices were similar to collusive prices reached in the simulation. These results have been published and may influence a deeper approach to future investigations in the cement sector.

37. The Chair noted that in addition to the structural indicators, summary statistics and price analysis discussed, profitability analysis can also be a relevant market study tool, although its application is controversial. He invited **Dr. Helen Jenkins** to discuss this type of analysis.

38. Dr. Jenkins began by noting that, when conducting profitability analysis, it is essential to have a clear idea of the hypotheses to be tested and the level at which the analysis should be targeted.

39. Industry-level analysis can help assess concerns about tacit co-ordination and collusion (by differentiating when price parallelism is competitive or not), or when competition occurs on a Cournot model and prices are higher than expected but not consistent with a fully co-ordinated price (for example, by considering barriers to entry). She noted, however, that when examining tacit co-ordination, it is important to combine profitability analysis with other information, such as price signalling evidence, in order to reach a reliable conclusion (for instance, forensic analysis on price signalling behaviour in the UK energy and cement market investigations showed different outcomes. In the energy investigation, there was no evidence of tacit co-ordination through signalling price announcements, whereas in the cement sector there was).

40. In the case of company-level profitability analysis, Dr. Jenkins noted that persistent levels of profitability at higher than expected levels could be an indicator of barriers to entry or potential exclusionary practices. In such cases, the analysis could focus on a single company, although Dr. Jenkins advised caution, noting that profits are an important part of success in markets, as a reward for efficiency or to spur innovation, as well as a signal to other market participants that there is something to fight for. Thus, authorities should be careful about intervening, and a market study may be a helpful method to assessing the functioning of the market before doing so.

41. Finally, product-level profitability analysis can assess fairness, particularly in the case of multiproduct firms, where issues such as cross-subsidisation can be considered. However, it should be recognised that businesses recover fixed costs differently across different consumers, which can lead to dispersion in pricing and could be procompetitive (as consumers may switch to more competitive products), but is increasingly being seen as a potential indicator of harm as well.

42. In sum, Dr. Jenkins opined that it is worthwhile to understand profitability, but that measuring and understanding profits is not the same thing as condemning them (it is not reasonable to ask if profits are too high, for instance). Financial analysis can provide insight into the incentives and behaviour in a market, and presenting these results back to firms can be a good way to unlock understanding of markets. It can also be helpful to look at changes over time, to assess the impact of regulatory changes for example.

43. In services sectors, Dr. Jenkins noted that there are a range of challenges in terms of how to measure profits. In particular, standard techniques focused on asset-intensive sectors do not apply well to service sectors, which generally involve low asset intensity and intangibles such as human capital, branding and networks which are not easily captured by financial analysis. Profit margins can also be challenging to benchmark, since it is necessary to put a firm's margins into context with an assessment of risk. Standard techniques match the return on capital to risk, which may be less meaningful in sectors such as financial or digital services due to challenges in capturing the value of assets.

44. Dr. Jenkins then turned to the subject of consumer biases. First, she discussed cross-subsidisation issues. From a competition perspective, she noted an argument could be made that having price dispersion in the market is good, since it enables consumers to discipline firms by searching for better products and prices. But consumers are vulnerable to bias, especially in sectors with complicated products, where competition discipline may not be effective (e.g. products with add-ons or options to make a package, and payday lending), and biases and optimism on the part of consumers leads them to make poor choices.

45. To illustrate these points, Dr. Jenkins described the example of the UK energy market investigation. One area for remedies identified in that investigation was standard variable tariffs, which featured higher margins relative to more competitive parts of the market and which tended to be used by more vulnerable customers. This outcome was associated with regulatory measures that barred firms from offering prices that varied by region, since, in response, firms offered higher prices to everyone and used other means to target consumers.

46. The UK CMA energy market investigation involved an extensive consumer survey, which Dr. Jenkins explained was unable to uncover the reason for low levels of switching among consumers despite potential gains from switching (although it was found that such gains would have to be significant for consumers to be willing to switch). Potential remedies discussed included the reduction in price dispersion across consumers, but Dr. Jenkins noted that such dispersion can be a necessary element in motivating consumer switching decisions. Dr. Jenkins expressed the view that competition authorities should move survey analysis from stated preference studies (which can involve bias by capturing intentions rather than likely behaviour), and focus more on revealed preferences as well as experimental techniques. These would enable on understanding of what would trigger change or switching. For example, the UK Financial Conduct Authority is conducting a study which makes greater use of experimental techniques, looking at financial services firms' product plans in order to infer what this suggests about consumers, and is investigating what drives the behavioural biases of consumers. This includes considering interventions requiring firms to provide consumers with comparative information about their products at the point of choice. In sum, Dr. Jenkins opined that it is important to understand what drives consumer inertia, rather than simply observing such inertia.

47. The Chair then invited **Korea** to comment on its use of profitability analysis in light of Dr. Jenkins' presentation. The delegate from Korea indicated that profitability ratios are used by the competition authority in that jurisdiction along with other ratios to help indicate problems in the market. For instance, when structural indices show an oligopolistic structure and high profitability, it could be indicative of a competition problem, as can low levels of R&D investment. On the other hand, if there is a relatively low level of profitability, it could show that there is a relatively low risk of dominance being abused. The delegate continued by noting that pricing structure indices can also be used to assess competition in a market. For instance, government-approved pricing structures or regulated pricing could be subjected to such analysis to assess competitive conditions in a market. In sum, the delegate noted that while high levels of profitability are not always fully conclusive, it can be an important indicator of competition.

48. Next, the **UK** described the analytical approach it adopted in its legal services market study and its retail banking market investigation (market studies and market investigations are two distinct tools in the UK). In the former case, the analysis was particularly focused on issues of consumer engagement and decision-making, including consumer awareness of quality, price and how consumers judge quality. A survey was commissioned alongside in-depth qualitative research including small business consumers of legal services. The market study also examined the level of transparency of provider information with respect to price and quality, based first on an assessment of what would be required for competition to work well, and then an assessment of what was actually available. This led to the conclusion of a lack of transparency on price, service and quality. The findings provided indications on the type of potential interventions that could help consumers choose between legal services providers, and

increase competitive pressure on providers. The delegate noted that the competition authority benefitted from the research and analysis of another regulatory body, the Legal Services Board, when conducting the market study.

49. In the case of its retail banking market investigation, the delegate noted that consumer engagement played a significant role as well. In particular, the study investigated whether there was weak consumer response due to a lack of engagement, and barriers to searching and switching, reducing incentives on banks to compete on price, quality or innovation. CMA also investigated whether there were barriers to entry and expansion, and whether the level of concentration was having an adverse effect on customers. An assessment of regulation and innovation in the financial technology sector was also conducted. One key area of analysis was uncovering the reasons for low levels of switching by consumers, and as a result measures to engage, empower and inform consumers were at the heart of the remedies that the CMA sought in this case.

50. Finally, the delegate noted that the competition authority is considering an updated approach to market investigations involving assessing potential remedies at an earlier stage; the reduction of formal consultations around publications, and encouraging earlier as well as more flexible interaction with the parties (e.g. earlier hearings with parties, consulting on analytical approaches and sequentially sharing analysis). In addition, changes are being considered to strengthen synergies between market studies and market investigations, in order to assess potential remedies earlier on, and facilitating a smoother transition to market investigation teams.

51. **Norway** was then asked by the Chair to discuss the demand-side analysis and remedies in a recent study it conducted involving motor vehicle warranties and repairs. The delegate began by noting that the competition authority in that jurisdiction considers market studies to be a resource-intensive exercise, and therefore that they are not often undertaken. Co-operative studies with the Nordic competition authorities have been undertaken to pool resources; for example, in 2016 the Nordic competition authorities conducted a joint study in the waste management sector. Joint market studies can have increased advocacy power as well.

52. With respect to the motor vehicle warranty study, the delegate noted that the competition authority sought to map out the terms and wording of warranty agreements to see whether they limited competition. The study benefitted from a request for information via the European Competition Network, to ask for information from other European Union member countries. While the study did not find sufficient evidence of an infringement, it did reveal that many warranties included misleading, contradictory and unclear conditions, which created uncertainty among consumers regarding whether they could choose among different repair shops without losing the car warranty. In response, the competition authority published a pamphlet to clarify the options available to consumers in terms of repair shops, which include both authorised and independent shops. The authority also provided legal guidance to retailers to clarify that misleading or unclear conditions could be considered an infringement, using a simple graphical approach to explain unacceptable provisions. The delegate noted that input from car owners, car importers and retailers, industry bodies, and independent repair and maintenance undertakings were sought during the study.

53. Next, **Italy** described the analysis it took of switching costs and switching rates in two subsequent retail banking investigations. The initial study focused on the prices of current accounts, and concluded that low switching rates were undermining competition. The authority proposed eliminating bank switching fees, and providing consumers with

more information to compare conditions, in particular an illustrative cost index to compare more complex products. Some legislative changes were adopted after the first study (bank account closing charges were prohibited by law), and the authority engaged in a follow-up study that served as an ex post assessment of the initial study. The second study found that prices did not change significantly, despite relatively significant price dispersion. Although consumers could save 180 euros per year by switching banks, switching rates have not increased.

4. The analysis of regulations

54. The Chair then introduced the final topic of the Roundtable: the analysis of regulations for market studies. He invited **Spain** to describe its assessment of regulations with respect to the retail distribution of medicine in a 2015 market study.

55. The delegate from Spain noted that the study sought to assess the impact of regulatory changes in the market (specifically with respect to regulatory quotas for the number of pharmacies permitted within a given area). The study compared regions with more and less restrictive regulations using an aggregate analysis to estimate the impact of regulation. This analysis found that regulatory reform removing limits to the number of pharmacies had a positive impact on the number of pharmacies, which held when dividing the population into three different groups as well (using a difference-in-differences analysis). The delegate also described the significant challenges faced by the market study team in obtaining information, since about 500 municipalities were considered and datasets were often heterogeneous. This required careful data validation procedures and efforts to homogenise the datasets. The delegate closed by noting that the findings of the study were used by the competition authority to advocate for the opening up of regulations and the removal of the quota system.

56. **Israel** then described its experience with the assessment of regulations in market studies. The delegate noted that the authority generally does not study regulations directly, but often stumbles upon regulations while conducting market studies. Industries for market studies are generally selected based on concentration or price levels, and begin with discussions with market participants. The delegate noted that market participants may sometimes justify high prices by pointing to high regulation costs, whereas potential new participants may complain about regulations creating barriers to entry in a market. In such cases, advocacy by a competition authority can become important, and the delegate reported having varying levels of success which depend on factors including the openness of the regulator to competition issues, and past experiences of joint work with that regulator. For example, in a study of gasoline stations, the competition authority found evidence of tacit collusion that had a regulatory dimension, since regulation imposed maximum prices that created a focal point for firms. The delegate also described the authority's experience in the banking industry, where several rules may hamper portability, and consumer switching remains low despite some recent improvements. Finally, the delegate described analysis done by the authority with respect to imports, since there are a range of regulatory restrictions and permits that affect competitive conditions in these markets.

57. **Peru** was then asked to describe its analysis with respect to the regulation of notaries in that jurisdiction. The delegate indicated that the competition authority of Peru, Indecopi, conducted a market study based on concerns among consumers about a lack of access to notarial services, based on efforts by notaries to block decisions to increase the

number of notaries in some areas, and based on statistics indicating that notaries were among the highest-paid professions in the country. Concerns about quality were also a motivating factor. The competition authority's study, which resulted in legislative changes, examined two entry regulations (legal entry barriers and rules on the selection process for notary licences) as well as two behavioural regulations (compulsory price information and limits to notary advertising). With respect to the entry regulations, the competition authority was unable to find an economic justification of limiting the number of notaries, particularly in light of evidence suggesting quality was decreasing in the market. An econometric analysis was performed to estimate the relationship between the number of notaries and the price of notarial services, which the authority found useful to explain concretely to the general public how additional notaries could bring down prices. In addition, the competition authority recommended that the licensing process should not be the responsibility of local notary associations. The delegate concluded by noting that the competition authority's recommendations were partly accepted, and therefore the market study was a successful advocacy effort.

58. Finally, the Chair turned to **Germany** to describe the regulatory assessments it conducted in studies of the milk and packaging waste sectors. The latter was an ex post evaluation of regulatory intervention into the market. In the former case, the delegate explained that the competition authority sought to understand how the milk sector works, from the procurement for raw milk, to dairies to the retail level. The inquiry found that there were competition problems associated with information systems for raw milk prices (which led to the standardisation of prices on the regional level), and limits to the ability of producers to switch to alternatives dairies. The competition authority's findings were used as an input into legislative processes involving the sector at the German and EU level. In addition, the authority initiated administrative proceedings involving the largest German dairy to examine how it set prices for consumers, as some sale conditions could completely foreclose competition. Finally, the inquiry's findings were used in advocacy efforts to call for changes in the structure of supply and procurement relationships to make them more competitive and compliant with competition law.

59. The German delegate explained that the packaging waste study was intended to investigate the effect of the introduction of competition in the market, in order to respond to concerns that competition could be detrimental to recycling rates. Thanks to the availability of extensive data and the homogeneity of the service provided, conditions were ideal for a quantitative study, which found that competition had no impact on recycling rates, and in fact reduced disposal costs by an estimated 50%. The delegate closed by noting that this study was undertaken as part of a broader OECD initiative to encourage the ex-post assessment of competition authority interventions.

5. Conclusion

60. To conclude the Roundtable, the Chair invited the expert panellists to provide some final thoughts.

61. **Dr. Jenkins** underlined the view that market studies are a key advocacy tool that can deal with a wide range of issues. With respect to information gathering, she noted that competition authorities may be faced with information asymmetry at the outset of a study, but in fact can gain a more holistic view of market competition than individual market participants, meaning they should take the opportunity to ensure that a wide range of views and evidence is brought to bear to test observations from stakeholders (recognising

the various incentives involved in such an exercise). Dr. Jenkins also opined that authorities should be aware of confirmation bias and the risk of political pressure, particularly at the end of the process.

62. Dr. Jenkins then touched on the subject of remedies, and specifically the need to avoid “knee-jerk” reaction to problems, focusing instead on identifying the underlying causes of a problem (e.g. some types of consumer behaviour).

63. Finally, Dr. Jenkins opined that the scrutiny of regulation is an important area for market studies, as regulation can often protect entrenched rent-seeking behaviour. While there may be reasonable rationales for regulations (regarding quality or standards, for example), there are often opportunities for competition to be leveraged to bring about positive outcomes – particularly in cases when regulations were designed at a time when the benefits of competition were less understood. However, there will be an increasing challenge on authorities to think of innovative remedies that can preserve the benefits of competition while protecting different segments of society (as opposed to simple “buyer beware” remedies designed to get more information to consumers).

64. **Mr. Palmigiano** then described the importance of a positive relationship between competition authorities and stakeholders throughout a market study – particularly given the natural hesitation some firms may feel when a market study could result in a complete change to business plans and market realities. Next, he discussed the importance for quantitative indicators to be put into context with market realities in the view of market participants, and for all indicators to point in the same direction for them to be relied upon when forming conclusions. Mr. Palmigiano emphasised the need for authorities to not prejudge the outcome of a study, and at the same time be aware of the particular objectives of various industry players participating in a market. He concurred with Dr. Jenkins’ comments regarding the usefulness of market studies for regulatory assessments. Finally, Mr. Palmigiano opined that informal information requests should be in general preferred (at least from the perspective of firms), unless an authority is not getting the information it needs or stakeholders require the protection of confidential information, in which case a formal information request may be preferable.

65. **The Chair** concluded by observing that the effectiveness of market studies as a tool has not been extensively discussed, and that it could be interesting to explore the comparative effectiveness of enforcement and non-enforcement tools.

66. Finally, the Chair observed that the discussion appeared to confirm the view that a combination of approaches is necessary to provide a degree of confidence to market study conclusions (including a mixture of quantitative and qualitative information which point in the same direction). He noted the importance of early information collection, and observed that an assessment should consider competition problems from both the demand and supply side of a market.